(2)

No. 03-1512

Supreme Court, U.S.
FILED
SEP 15 2004
OFFICE OF THE CLERK

In The
Supreme Court of the United States

RONALD JOHNSON AND DEE JOHNSON,

Petitioners,

v.

CITY OF SHOREWOOD, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

SUPPLEMENTAL BRIEF

GEORGE C. HOFF*
HOFF, BARRY & KUDERER, P.A.
160 Flagship Corporate Center
775 Prairie Center Drive
Eden Prairie, MN 55344-7319
952-941-9220
Counsel for the Respondent City of Shorewood

September 15, 2004

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

INTRODUCTION

Pursuant to Rule 15 of the Rules of the Supreme Court of the United States, Respondent City of Shorewood (hereinafter "Shorewood") submits the following for the purpose of correcting factual misrepresentations in Petitioners' supplemental brief.[1]

PETITIONERS HAVE BEEN COMPENSATED PURSUANT TO ALL COURT ORDERS

In an attempt to persuade this Court to grant certiorari, Petitioners allege that Shorewood has not paid the judgment granted by the Minnesota Courts with respect to their takings claim. Petitioners' assertions are false. The takings claim has been fully litigated in the Minnesota Courts and all amounts found due and owing to Petitioners have been paid by Shorewood.

Petitioners' property within Shorewood (the "Property") abuts a private development known as Waterford that was platted and constructed in 1984-1985. A drainage ditch runs diagonally through Petitioners' Property and continues through the Waterford subdivision. In August 1991, Petitioners initiated an inverse condemnation action in State District Court claiming flooding of the Property from Shorewood's construction of a pond control structure. On August 17, 1993, the Hennepin County District Court,

[1] Pursuant to its Waiver dated May 20, 2004, Shorewood will respond to Petitioners' Petition for Writ of Certiorari upon this Court's request, but felt that it must respond now to the glaring misrepresentations in Petitioners' Supplemental Brief.

Judge Montgomery, found a taking for flooding up to an elevation of 914 feet and ordered Shorewood to commence condemnation proceedings. Petitioners' Appendix pp. 100-101 (hereinafter, "App. p."). Shorewood commenced condemnation proceedings on September 29, 1994. Respondent's Appendix p. 2 (hereinafter, "R. App. p."). Following a trial, a jury awarded $2,000 for the taking and $63,000.00 for clean-up costs plus costs and disbursements. App. pp. 66-68. The court vacated the $2,000 takings award based on the jury's finding that the taking had not changed the market value of the Property but left the $63,000.00 award intact. *Johnson v. City of Shorewood*, 360 F.3d 810, 815 (8th Cir. 2004); App. pp. 7-8. Petitioners did not appeal the dollar amount of the award. *Id.* On May 18, 1998, Shorewood paid Petitioners $116,480.96 which included the $63,000.00 awarded by the jury plus interest at the statutory rate from January 1, 1985, through May 18, 1998, in full satisfaction of the judgment. R. App. pp. 5-7. On October 28, 1999, Petitioners were awarded $67,335.95 for legal fees and costs incurred in the condemnation proceedings. R. App. p. 3. Shorewood paid the award on April 5, 2000, in full satisfaction of the judgment. R. App. pp. 8-10.

Petitioners argue that on May 21, 2004, former Chief Judge Kevin S. Burke, Hennepin County District Court "confirmed in the sump pump assessment litigation that the Johnsons have received NO compensation for the previously-adjudicated taking in the previous state court condemnation proceedings" and "the City did not pay the petitioner's damages." Petitioners' Supplemental Brief at 1 and 2. As is obvious from the payments by Shorewood, the claim of non-payment is simply not true. The matter

before Judge Burke was limited to whether a certified copy of the record must be produced in response to Petitioners' challenge to Shorewood's certification of sump pump surcharges. Although irrelevant to the motion and completely unrelated to the certification of sump pump charges at issue, Petitioners raised at oral argument the previous litigation history of the parties and, through false statements of fact, led Judge Burke to incorrectly conclude that Shorewood had not paid damages it owed.[2] In fact, Shorewood has paid all damage awards owed to Petitioners. R. App. pp. 5, 8. Moreover, Petitioners have signed Satisfactions of Judgment indicating that they have been paid. R. App. pp. 6, 7, 9, 10. It is disingenuous, at best, for Petitioners to continue to assert that they have been paid no compensation when they were paid more than $180,000.00 in damages, fees, and costs related to the takings claim which they ask this Court to review.

[2] Shorewood has moved for summary judgment on Petitioners' latest claims and has requested corrective findings regarding the inaccurate statements in Judge Burke's order.

CONCLUSION

Shorewood has paid all compensation to Petitioners which it has been ordered to pay in the State Court takings case, totaling more than $180,000.00 in damages, fees, and costs. Despite this, Petitioners falsely continue to assert that they have received nothing and that Shorewood has failed to pay amounts adjudicated against it.

Respectfully submitted,

GEORGE C. HOFF
HOFF, BARRY & KUDERER, P.A.
160 Flagship Corporate Center
775 Prairie Center Drive
Eden Prairie, MN 55344-7319
952-941-9220
Counsel for Respondent
City of Shorewood

STATE OF MINNESOTA

COUNTY OF HENNEPIN

City of Shorewood, Petitioner, vs. Ronald Johnson and Dee Johnson, et al., Respondents.	**ORDER** (Filed Nov. 5, 1999) File No. CD-2234

The above-entitled matter came before the undersigned Judge of the District Court, on October 14, 1999, at the Hennepin County Government Center in Minneapolis, Minnesota, on Respondents' motion for taxation of interests and costs.

GARY A. VAN CLEVE, Esq., appeared for and on behalf of Petitioner City of Shorewood.

DANIEL R. SCHULMAN, Esq., appeared for and on behalf of Respondents Ronald and Dee Johnson.

Based upon all files, records and proceedings herein, together with the arguments of counsel,

IT IS HEREBY ORDERED:

1. That Defendant's motion for taxation of interests and costs is hereby **DENIED** in part and **GRANTED** in part.

2. That the attached Memorandum is hereby incorporated into and made part of this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT:

Dated: Oct. 28, 1999 /s/ Allen Oleisky
Allen Oleisky
Judge of District Court

MEMORANDUM

FACTS

In 1984 the City of Shorewood ("Shorewood") constructed a storm sewer collection pond next to property (the "Property") owned by Ronald and Dee Johnson (the "Johnsons"). Shorewood also constructed a pond control structure to control the rate of water flowing from the pond into a ditch beyond the pond. Occasionally during major storms the water in the pond rose to a level where it overflowed the pond control structure. Water would then back up onto the Property.

In 1991, the Johnsons sued Shorewood claiming that the flooding of the Property was a compensable taking. On August 17, 1993, the trial court found that an irreversible physical taking had occurred and ordered Shorewood to commence condemnation proceedings. Shorewood commenced condemnation proceedings on September 29, 1994 and the court-appointed condemnation commissioners awarded the Johnsons $2000.00 for the easement value of the Property, and additional $3000.00 as "cost-to-cure" damages. The Johnsons appealed the determination of the commissioners and the matter went to trial on October 14, 1996 before this Court.

The only issue for the jury to determine at trial was the value of the easement for drainage that Shorewood was required to condemn. On October 23, 1996, the jury returned a special verdict awarding the Johnsons $2,000.00 for the easement value of the part of the Property that was condemned. The jury also found that there was no difference in the fair market value of the Property from before and after the taking by Shorewood. Finally, the jury also found that the Johnsons were entitled to $63,000.00 in compensation for the clean-up of the Property.

* * *

an acquiring agency. Although the Johnsons have sought costs under MINN. STAT. § 117.195 instead of § 117.045, this Court sees no reason why the rational expressed by the Supreme Court concerning cost recovery under § 117.045 should differ from that under § 117.195.

Shorewood initiated the actions that caused the damage to the Johnsons' Property. The Johnsons were forced to seek redress for their damages in court through condemnation proceedings. The Johnsons have expended considerable sums of money in preparation and presentation of their claims at trial. These are sums they would not have had to spend had Shorewood not damaged their Property through its taking. It is unlikely that the Johnsons would have recovered any of their damages had they not resorted to legal action. In order to be made whole again they must recover the expenses they incurred in preparation and presentation of their claims at trial. The Johnsons are hereby awarded costs in the amount of $67,335.95.

CONCLUSION

For the foregoing reasons this Court denies respondents' motion for a change of interest rate and grants Respondents' motion for costs.

CITY OF SHOREWOOD

MEMO	INVOICE DATE	INVOICE NUMBER	AMOUNT	DISCOUNT	NET AMOUNT
ayment of $63,000 judgement and interest from 1/1/85 thru 5/18/98					116,480.96
		TOTALS			116,480.96

TACH BEFORE DEPOSITING

CITY OF SHOREWOOD
5755 COUNTRY CLUB ROAD
SHOREWOOD, MN 55331

FIRST STATE BANK
EXCELSIOR, MN 55331
75-870/919

No. 023028

DATE	CHECK NO.	AMOUNT
05/18/98	23028	$116,480.96

*****ONE HUNDRED SIXTEEN THOUSAND FOUR HUNDRED EIGHTY DOLLARS & 96 CENTS*****

PAY TO THE ORDER OF

Ronald R. Johnson,
Dee L. Johnson, and
Shulmann, Walcote & Shulmann P.A.

Tim Oakley
Theresa L. Ehrst

⑈023028⑈ ⑆091908700⑆ 100 0643⑈

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

CASE TYPE: Condemnation

File No. CD-2344

City of Shorewood,
a Minnesota municipal corporation,

Plaintiff,

v.

Ronald Johnson and
Dee L. Johnson, et al.,

Defendants.

SATISFACTION OF JUDGMENT

Ronald R. Johnson and Dee L. Johnson, the judgment creditors in this matter, hereby certify that the judgment entered and docketed on July 22, 1997, in the above-entitled action in favor of Defendants Ronald R. Johnson and Dee L. Johnson and against Plaintiff City of Shorewood for the sum of $65,508.70 was paid and satisfied in full on May 18, 1998, and the court administrator is hereby authorized to discharge said judgment of record.

Dated 4-19-00

/s/ Ronald R. Johnson
Ronald R. Johnson
5355 Shady Hill
Shorewood, MN 55331

Subscribed and sworn to before me this 19 day of ~~March~~, April 2000

/s/ Grace P. Sufka
Notary

[SEAL] GRACE P. SUFKA
NOTARY PUBLIC – MINNESOTA
ANOKA COUNTY
My Comm. Expires Jan. 31, 2005

Dated 4-19-00

/s/ Dee L. Johnson
Dee L. Johnson
5355 Shady Hill
Shorewood, MN 55331

Subscribed and sworn to before me this 19 day of ~~March~~, April 2000

/s/ Grace P. Sufka
Notary

[SEAL] GRACE P. SUFKA
NOTARY PUBLIC – MINNESOTA
ANOKA COUNTY
My Comm. Expires Jan. 31, 2005

SHULMAN,WALCOTT,& RON JOHNSON Vendor# 22978 Check# 27726 04/05/2000

ACCOUNT NO.	DESCRIPTION	INVOICE NO.	DATE	AMOUNT DUE
101-41600-440	R JOHNSON SETTLEMENT		04/05/00	67,335.95

67,335.95

67,335.95

CITY OF SHOREWOOD
5755 COUNTRY CLUB ROAD
SHOREWOOD, MN 55331

No. 027726

FIRST STATE BANK
EXCELSIOR, MN 55331
75-870/919

DATE 04/05/2000 CHECK NO. 27726 AMOUNT $67,335.95

PAY Sixty-Seven Thousand Three Hundred Thirty-Five And 95/100

TO THE ORDER OF
SHULMAN,WALCOTT,& RON JOHNSON
LARKIN, HOFFMAN ATTN: GARY VAN CLEVE
1500 NORWEST FNCL CTR
7900 XERXES AVE S
BLOOMINGTON MN 55431

MP

MP

"027726" :091908700: 100 0643"

BEST AVAILABLE COPY

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

CASE TYPE: Condemnation

File No. CD-2344

City of Shorewood,
a Minnesota municipal corporation,

Plaintiff,

v.

Ronald Johnson and
Dee L. Johnson, et al.,

Defendants.

SATISFACTION OF JUDGMENT

Defendant Ronald R. Johnson and Dee L. Johnson, the judgment creditors in this matter, hereby certify that the judgment for costs in the amount of $67,335.95 entered but not docketed on January 5, 2000 in the above court in favor Defendant Ronald R. Johnson and Dee L. Johnson and against Plaintiff City of Shorewood is paid and satisfied in full, and the court administrator is hereby authorized to discharge said judgment.

Dated 4-19-00

/s/ Ronald R. Johnson
Ronald R. Johnson
5355 Shady Hill
Shorewood, MN 55331

Subscribed and sworn to before me this 19 day of April, 2000

/s/ Grace P. Sufka
Notary

[SEAL] GRACE P. SUFKA
NOTARY PUBLIC – MINNESOTA
ANOKA COUNTY
My Comm. Expires Jan. 31, 2005

Dated 4-19-00

/s/ Dee L. Johnson
Dee L. Johnson
5355 Shady Hill
Shorewood, MN 55331

Subscribed and sworn to before me this 19 day of April, 2000

/s/ Grace P. Sufka
Notary

[SEAL] GRACE P. SUFKA
NOTARY PUBLIC – MINNESOTA
ANOKA COUNTY
My Comm. Expires Jan. 31, 2005